

REMARKS

Claims 1-33 are pending in this application. By this Amendment, the specification and claims 1, 5 and 13 are amended. No new matter is added.

Applicant gratefully acknowledges the indication that claims 14-19 contain allowable subject matter. However, for the reasons set forth below, Applicant respectfully submits that all of the claims are allowable, and therefore declines to rewrite claims 14-19 in independent form at this time.

The Office Action objects to the specification as allegedly failing to provide proper antecedent basis for the subject matter recited in claims 25, 28 and 31. Applicant respectfully disagrees and traverses the objection.

As the original claims form part of the specification as originally filed, the claims themselves provide antecedent basis for the subject matter recited therein. However, to expedite prosecution, Applicant amends the specification to add a paragraph in the Summary corresponding to the features recited in claims 25, 28 and 31. Further, Applicant amends paragraph [0050] to explicitly describe the feature identified by the Office Action. As Figure 3, the specification and the claims as originally filed support the amendments to the specification, no new matter is added.

Therefore, Applicant respectfully submits that the specification provides proper antecedent basis for the subject matter of claims 25, 28 and 31. Accordingly, withdrawal of the objection to the specification is respectfully requested.

Claim 5 is rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claim 5 is amended to correct the dependency thereof, thereby obviating the rejection for lack of antecedent basis for "the spring." Accordingly, withdrawal of the rejection under 35 U.S.C. §112 is respectfully requested.

Claims 1, 2, 4-8, 10-13, 20, 23-25 and 31 under 35 U.S.C. §102(b) over EP 506 564 A1 (EP '564). Claims 3, 9, 21, 22, 26-30, 32 and 33 are rejected under 35 U.S.C. §103(a) over EP '564. These rejections are respectfully traversed.

Independent claim 1 recites an applicator in a device comprising a receptacle containing a substance. As recited in claim 1, the applicator includes a handle member that is configured to close the receptacle. Applicant respectfully submits that EP '564 fails to disclose, teach or suggest such features.

The Office Action refers to EP '564 as disclosing an applicator comprised of a handle member 1', a retainer 8' secured to the handle member 1', an applicator ball 9' rotably mounted in the retainer 8', an elastically deformable link element 12' (apparently intended to refer to spring 13') connecting the retainer 8' to the handle member 1' so that the retainer 8' is movable relative to the handle member 1', wherein the handle member 1' is configured to close a receptacle 14'. Applicant respectfully disagrees with this characterization of EP '564.

Figure 4 of EP '564, relied on by the Office Action, clearly shows a receptacle 1' that may be placed in communication with a contact element (applicator) 9' via a stem 12' and a spring 13' to provide a substance contained in the receptacle 1' to the contact element 9'. The contact element 9' is retained in a support 8'. When not in use, the contact element 9' may be protected by a cover or cap 14' that attaches to the receptacle 1'.

Contrary to the Office Action's characterization, the cap 14' is not the receptacle according to EP '564. Only the receptacle 1' contains a substance. The cap 14' does not contain any substance, and thus cannot reasonable be considered to be the receptacle as recited in claim 1. Further, while the receptacle 1' of EP '564 arguably is a handle member, it is unreasonable to consider the receptacle 1' to be configured to close itself. For example, a valve 11' is configured to open/close the receptacle 1'.

Therefore, Applicant respectfully submits that EP '564 cannot anticipate independent claim 1 because EP '564 fails to disclose, teach or suggest each and every feature recited in claim 1. Accordingly, claim 1 is patentable over EP '564.

Independent claim 22 recites an applicator including a foam connecting a handle member to a retainer. Applicant respectfully submits that EP '564 fails to disclose, teach or suggest such features.

Although the Office Action admits that EP '564 fails to teach a foam, the Office Action asserts that it would have been obvious to replace the spring of EP '564 with "any suitable elastically resilient material/element which effectively biases the applicator ball." Applicants respectfully disagree.

First, the Office Action's apparent reliance on Applicants disclosure in this regard is improper. Applicants disclosure is irrelevant and cannot be used to support an allegation of obviousness. Hindsight based on Applicant's disclosure cannot form the basis of an obviousness rejection. Therefore, the Office Action fails to state a proper motivation for the alleged modification of EP '564.

Further, Applicant respectfully submits that a person skilled in the art would have been deterred from the modification proposed by the Office Action because a block of foam may close the duct 10' impairing the ability of the substance in the receptacle 1' to reach the contact element 9'. Disposing the spring 13' around the duct 10' as taught by EP '564 provides no such drawback and provides free flow for the substance to reach the contact element 9'.

Therefore, Applicant respectfully submits that the subject matter recited in claim 22 would not have been rendered obvious by EP '564. Accordingly, claim 22 is patentable over EP '564.

Independent claim 23 recites an applicator including a spring connecting a handle member to a retainer and allowing the retainer to depart from the axis at least during

application. Applicant respectfully submits that EP '564 fails to disclose, teach or suggest such features.

The Office Action fails to specifically address these claimed features, referring only to the disclosure of a helical spring 13' in EP '564. The support 8', alleged to correspond to the retainer in claim 23, is slidably mounted on the receptacle 1' to move axially only. As such, the spring 13' of EP '564 cannot allow the support 8' (retainer) to depart from the axis as does the spring recited in claim 23.

Therefore, Applicant respectfully submits that EP '564 cannot anticipate independent claim 23 because EP '564 fails to disclose, teach or suggest each and every feature recited in claim 23. Accordingly, claim 23 is patentable over EP '564.

Dependent claims 2-13, 20-21 and 24-33 are patentable over EP '564 at least in view of the patentability of claims 1, 22 and 23 from which they respectively depend, as well as for the additional features they recite. Accordingly, withdrawal of the rejections based on EP '564 is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-33 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Klifton L. Kime
Registration No. 42,733

WPB:KLK/hs

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OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

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